

newly carried stations are relegated to disadvantageous channel positions or otherwise victimized by discriminatory treatment, they will face an impossible task in attempting to catch-up with their major network competitors. Therefore, read to cover only carry-one, carry-all stations, Section 338(d) would become toothless in terms of warding off the harm it is intended to prevent.

In view of the above, the Commission must apply the contiguous channel requirement to all local television stations in a market, whether carried as carry-one, carry-all or retransmission consent stations.

B. All local television stations must be provided to satellite subscribers in the same package.

All local stations carried by a satellite carrier must be included in a single package of local-into-local service. The combined operation of the various elements in Section 338(d) enjoins this requirement. First, the single-package approach embraces the basic goal of section 338 – to prevent discrimination among local television stations. This is the essence of the carry-one, carry-all requirement. It should remain at the core of every rule implementing section 338. In the absence of a single-package requirement, many local television stations could find themselves at a severe disadvantage. For example, the satellite carriers already are providing a limited local-into-local service in a few larger markets. Typically, four local stations – the ABC, CBS, NBC, and Fox

⁴¹H. Rep. 102-628, *supra*, at 64.

affiliates – are provided as a single package at a price of five to six dollars per month⁴².

In 2002, the satellite carrier will be required by section 338 to add other local stations to their local-into-local service. The newly carried stations would suffer considerable discriminatory impact if they were not included in the same package, particularly if the second package cost more on a total or per station basis. This is precisely the harm Congress sought to avert not only in the particular prescription in section 338(d), but in section 338 as a whole.

Second, the contiguous channel requirement commands that all local signals be grouped together, fully consistent with the notion of a single package. Signals carried on widely-separated channels would be difficult to package. On the other hand, signals carried on contiguous channels are difficult to offer in separate program packages. It may be technically possible, but unbundling of local stations on contiguous channels would create subscriber confusion and resistance.

Third, the single-package approach would be consumer friendly, consistent with congressional intent behind Section 338(d). A subscriber purchasing local-into-local service would make one decision and receive a single service at one price. All local stations would be available in the most convenient and accessible manner. Therefore,

⁴² See, e.g., Dish Network's website, <http://www.dishnetwork.com/programming/local/dc .HTM>, which offers four Washington, D.C., affiliates for \$4.99 per month.

the single-package approach would further express congressional intent that “satellite carriers position local stations in a way that is convenient and practically accessible.”⁴³

Fourth, no other approach would similarly preserve competitive parity between cable systems and satellite providers – another express congressional purpose underlying the Act. The single-package requirement closely resembles the requirement that cable systems carry all broadcast stations on the basic tier. Like the basic tier requirement, it provides for nondiscriminatory carriage of local television stations. Satellite carriers do enjoy the ability to package broadcast signals separately from other program channels and charge an additional fee for their reception, but this hardly tosses every thought of competitive parity with cable out the window. To the contrary, the goal of establishing competitive parity would be advanced more effectively if the new rules limit rather than enhance satellite carriers’ more flexible regulatory regime. Therefore, the single-package approach effectively responds to congressional intent to foster competitive parity.

Fifth, bundling local stations in a single package is essential to prevent price discrimination among stations, which is expressly prohibited in section 338(d). Section 338(d) prohibits satellite carriers from providing access to a local station’s signal at a discriminatory price. It is a flat ban on discriminatory pricing. No provision is made for justification of price differentials among local stations offered by a satellite carrier.

⁴³Conf. Rep. at S14711.

Thus, it essentially requires that all local stations be carried at the same price. Price discrimination would flow inevitably from providing distinct groups of local stations in separate packages. The primary purpose of packaging is to effect different – indeed, discriminatory – pricing. Otherwise, separate packages serve no purpose. Thus, separate packages would constitute a virtual *per se* violation of section 338(d). On the other hand, the single package requirement would implement section 338(d)’s price discrimination prohibition flawlessly. If all local stations were provided in the same package, then retransmission consent and carry-one, carry-all stations would be available in one package at a single price. Each would be available at the same per-channel price. And price discrimination would be impossible.

Thus, the single-package requirement presents the Commission with a simple, straightforward, and effective means of preventing price discrimination in a manner that also furthers pertinent statutory goals and congressional intent.

C. The rules should prohibit satellite carriers from requiring consumers to acquire and/or install additional equipment in order to receive the signals of some local stations.

Congress intended that the signals of local television stations be conveniently available to subscribers and at a nondiscriminatory price. The need to purchase and/or install new consumer premises equipment – a new or second dish or set-top box, for example – in order to receive some local stations (*e.g.*, carry-one, carry-all stations), while others (*e.g.*, retransmission consent stations) are available with a subscriber’s

existing equipment, deeply offends both notions. First, purchasing or installing additional equipment hardly is convenient. Second, the cost of new equipment and/or the installation of new equipment to the subscriber would represent price discrimination at its worst. For example, satellite carriers already providing limited local-into-local service in a market via carriage of a few retransmission consent stations will be adding additional local signals, the carry-one, carry-all stations, to their local-into-local service in that market to achieve compliance with section 338 in 2002. A requirement that subscribers purchase and install new equipment to receive the newly-added carry-one, carry-all signals would constitute blatant price discrimination against the newly-added signals. Even if the satellite carrier offered the new equipment for free, installation costs alone can be significant. In either case, subscribers would shoulder the additional cost for some signals, but not others. Consequently, many subscribers would balk at acquiring additional equipment to carry the additional local signals, thereby depriving those stations of access to the local audience. Indeed, Congress recognized that satellite subscribers would be particularly reluctant to incur costs just to receive local signals other than those of the major networks.⁴⁴ Moreover, the carry-one, carry-all stations – the very stations section 338 was designed and intended to protect – would endure the discrimination. Therefore, a requirement that subscribers purchase additional

⁴⁴ *Id.* (“Although the conferees expect that subscribers who receive no broadcast signals at all from their satellite service may install antennas or subscribe to cable service in addition to satellite service, the Conference Committee is less sanguine that subscribers who receive network signals and hundreds of other program choices from their satellite carrier will undertake such trouble and expense to obtain over-the-air signals from independent broadcast stations.”).

equipment to receive some local signals would utterly nullify the intended benefits of the carry-one, carry-all requirement.

Furthermore, failure to make additional local stations available on existing customer equipment would violate the provision requiring nondiscriminatory access to signals on navigational devices, on-screen guides, and menus. If the additional local signals were excluded from the display of available channels or programming on an onscreen guide, then the discrimination would be manifest. No less offensive to the requirement – and arguably more offensive to consumers – would be the inclusion of the additional local stations' channel and programming in a guide or menu with no means of actually gaining access to the signals. In either case, the notion of nondiscriminatory access on program guides, menus, and other navigational aids and devices would be blatantly offended.

Finally, permitting satellite carriers to require subscribers to incur extra inconvenience and expense to gain access to some, but not all, local channels, would offend the notion of competitive parity with cable. Cable systems are prohibited from requiring subscribers to acquire additional equipment to maintain access to the signals of selected local television stations. No reason exists to foist this additional confusion and expense on satellite subscribers.

In sum, requiring subscribers to acquire and install new equipment to receive some of a satellite carrier's complement of local signals would clash headlong with section 338's prohibitions on discrimination. Therefore, rules implementing section 338(d) should prohibit satellite carriers from requiring subscribers to acquire or install new equipment in order to receive the signals of some additional local stations.

D. The signals of all local television stations must be accessible to subscribers on precisely the same basis in any navigational device, program guide, or menu.

Section 338(d) requires that signals of local television stations be made available “in a nondiscriminatory manner on any navigational device, on-screen program guide, or menu.”⁴⁵ Whereas the various ever-changing permutations of program access schemes defy development of all-inclusive guidelines, the following types of discriminatory access ought to be prohibited from the outset:

- Exclusion of a local station from an on-screen program guide;
- Placement of some local stations on different, less easily retrieved screens (pages) of an on-screen guide;
- Exclusion of a local station from any special access features, *e.g.*, a menu of program choices organized by type, a feature permitting browsing of a program guide while continuing to view a program, or access to additional program information (*e.g.*, plot, duration, stars, ratings, content advisories);
- Requiring more steps (*e.g.*, remote mouse clicks) to view some or all of local channels; and
- Excluding some or all local stations from second-set access when access to other satellite-delivered programming is provided.

⁴⁵47 U.S.C §338(d).

This list hardly is exhaustive, but it does illustrate several obvious practices that would violate section 338(d). Notably, section 338(d) establishes an unqualified ban on discriminatory practices. No provision is made for justifying a discriminatory action on any basis whatsoever. This contrasts markedly with other anti-discrimination provisions.⁴⁶ Therefore, once discrimination is shown, no leeway is provided a satellite carrier to attempt to justify its behavior.

Therefore, the Commission must implement the channel positioning provision in a manner which is effective and faithful to the statutory language and goals of section 338 and section 338(d) in particular.

III. Broadcast station delivery of a good quality signal.

Just as feeble channel positioning rules could rob the basic carry-one, carry-all provision of its force and benefit, faulty application of the good quality signal requirement could inadvertently deprive local television stations of their carriage rights. Again, the Commission must adopt rules that reflect the differences between the cable and satellite laws and technologies, but remain in synch with section 338 and its underlying congressional objectives.

⁴⁶*E.g.*, 47 U.S.C. §628(c)(2)(B) (discrimination by a satellite cable program vendor); *see* 8 FCC Rcd at 3393 *et seq.*

- A. ***A local television station should be required to bear none of the costs of delivering a good quality signal to a satellite carrier if a good quality signal from the station is available off-the-air at the site of the satellite carrier's designated local receive facility.***

A station that places a good quality off-air signal over a satellite carrier's local receive facility should bear no additional costs of delivering its signal to the satellite carrier. Section 338(b)(1) incorporates the same language used by Congress in the 1992 Cable Act with respect to assessment of costs against a must-carry station. In the cable context, a station is not considered a local station unless the station "deliver[s]" a good quality signal to the principal headend of the cable system. Section 338(b)(1) similarly requires the station pay the costs of "delivering a good quality signal to the designated local receive facility of the satellite carrier...."⁴⁷ Providing an off-air signal of requisite strength constitutes delivery of a signal. A station need provide no additional equipment or bear any other cost if it places a good quality signal over the specified location.⁴⁸ For cable systems, it is the principal headend.⁴⁹ For satellite carriers, the point of reception and initial processing is the local receive facility.⁵⁰ Therefore, a

⁴⁷47 U.S.C. §338(b)(1).

⁴⁸*Greater Dayton Public Television*, 9 FCC Rcd 5290, 5291 (1994), citing *Clarification Order*, 8 FCC Rcd 4142, 4144 (1993) ("[C]able operators may not shift the costs of routine reception of broadcast signals to those stations seeking must carry status... Sammons does not dispute that WPTD provides a good quality signal to its headend. Therefore, WTPD is not obligated to provide the cost of any equipment Sammons feels necessary to receive its signal").

⁴⁹47 C.F.R. §76.55(d)(2); see also *Broadcast Signal Carriage Rules*, *supra*, 8 FCC Rcd at 2968 ("[T]he 'principal headend' in the majority of systems will be the headend ... accommodating the most signal processing equipment...."); *Notice of Proposed Rule Making*, Docket No. 20496, 53 FCC 2d 1009, 1012-13 (1975)("[W]e would propose to define a system's headend as the tower receiving the majority of off-the-air signals originating from broadcast stations....").

satellite carrier may assess no costs of signal delivery against a local television station that places a good quality signal over the designated local receive facility of the satellite carrier.

B. The Commission should import the cable definition of a good quality signal into the satellite rules.

The same definition of a good quality signal should be applied for purposes of both the cable and satellite rules. No basis exists to draw any distinction because of the distinctive technologies or operational features of cable systems and satellite carriers. A signal is of good quality whether it falls over a cable headend or a satellite carrier's local receive facility. Furthermore, the standard is high, as the Commission recognized when it adopted this same standard in 1986:

The standard we are adopting requires that such signal equal or exceed a high picture quality in which interference may be just perceptible.⁵¹

Years of experience have proven the validity and reliability of the standard established in the cable television rules.⁵² Therefore, the Commission should consider a signal of the strength specified as a good quality signal in the cable television rules as a good quality signal under section 338.⁵³

⁵⁰47 U.S.C. §338(h)(2) (“The term ‘local receive facility’ means the reception point in each market....”).

⁵¹*Must Carry Rules*, 61 RR2d 792, 837 (1986).

⁵²*E.g., Broadcast Signal Carriage Issues (Reconsideration)*, 9 FCC Rcd 6723, 6735-36 (1994).

⁵³47 U.S.C. §534(h)(1)(B)(iii); 47 C.F.R. §76.55 (c)(3).

C. The Commission should interpret the good quality signal requirement for satellite carriers as it has interpreted the provision for cable systems.

The detailed jurisprudence that has evolved in the cable context should apply equally to satellite carriers. The application of current precedents from the cable jurisprudence will assure that satellite carriers and cable systems are treated uniformly to the extent required by section 338(b)(1) and consistent with Congress's intention to establish regulatory and competitive parity between satellite carriers and cable systems.

The following interpretations, among others, should apply to local stations' delivery of good quality signals to the designated local receive facility of a satellite carrier:

- The availability of a good quality signal at the designated local receive facility will be determinative of a local station's obligation to cover any costs of signal delivery even if the signals are actually received and processed elsewhere.⁵⁴
- Satellite carriers must demonstrate by actual measurements taken in accordance with existing Commission requirements that a local television station fails to deliver a good quality signal to its designated local receive facility.⁵⁵ Use of computer predictions is unacceptable.⁵⁶
- A local television station is relieved of any responsibility for payment of the costs of providing a good quality signal as of the time it delivers a good quality signal off-air to the satellite carrier's designated local receive facility. Cable systems have been required to carry stations previously denied carriage once the station delivered a good quality signal to the system's designated headend.⁵⁷ By analogy, a satellite carrier's right to require a station to bear costs of signal delivery should cease once a good

⁵⁴*Paxson Salt Lake City License, Inc.*, 15 FCC Rcd 7361 (2000); *Family Stations, Inc.*, 10 FCC Rcd 1672 (1995).

⁵⁵*Broadcast Signal Carriage Issues, supra*, 8 FCC Rcd at 2990, nn.299-300.

⁵⁶*New Life Evangelistic Center, Inc.*, 10 FCC Rcd 9 (1994).

⁵⁷*Clarification Order, supra*, 8 FCC Rcd at 4142.

quality signal from the station is available off-air at the designated local receive facility.

- Satellite carriers, like cable operators, may not assess local television stations the cost of basic reception facilities, where the station places a good quality signal over the site of the designated local receive facility.⁵⁸ Similarly, satellite carriers must orient receive antennas properly in establishing reception and measuring local television stations' signal strength.⁵⁹
- Local television stations may deliver a good quality signal via direct feeds or provision of specialized equipment for reception of their off-air signal.⁶⁰
- Satellite carriers building new local receive facilities must consult with local television stations concerning the equipment necessary to receive their signals and negotiate the cost of any upgrades required to enable reception of a good quality signal.⁶¹
- Satellite carriers must provide local television stations with prior notice that the station fails to deliver a good quality signal to the carrier's designated local receive facility.⁶² The notification must include the requisite test information and results establishing the lack of a good quality signal at the site.⁶³

⁵⁸*Sonshine Family Television, Inc.*, 14 FCC Rcd 15391, 15395 (1999) ([T]he Communications Act and the Commission mandate that cable operators may not shift the costs of routine reception of broadcast signals to those stations seeking must-carry status.”).

⁵⁹*USA Station Group Partnership of Atlanta*, 15 FCC Rcd 7355, 7357 (2000).

⁶⁰*Broadcast Signal Carriage Issues, supra*, 8 FCC Rcd at 2991 (“This may include improved antennas, increased tower height, microwave relay equipment, amplification equipment and tests that may be needed to determine whether the station’s signal complies with the signal strength requirements, especially if the cable system’s over-the-air reception equipment is already in place and is otherwise operating properly.”); *see also, e.g., Comcast Cablevision of New Mexico*, CSR-5508-A; CSR-5486-M, DA 00-1007 (released May 9, 2000) (“KRPV’s signal will be available to Comcast’s headends via satellite transmission.”); *Complaint of CTV of Derry, Inc.*, 11 FCC Rcd 1826, 1827 (1996) (“[W]here a signal fails to meet Commission standards, it did not expect the cable operator to bear the burden of improving the signal if the problem resulted from an unsatisfactory local television signal, but it expected the cable operator to cooperate with the television station in resolving the problem.”).

⁶¹*Broadcast Signal Carriage Issues, supra*, 8 FCC Rcd at 2992, n.301.

⁶²*Clarification Order, supra*, 8 FCC Rcd at 4143.

⁶³ *See* section III.G, *infra*.

The direct importation of these interpretations of the cable rules will flesh out the basic framework of the rule, thereby instilling certainty and extracting contentiousness from the Commission's new satellite rules.

D. Provision of a good quality signal is not a prerequisite to satellite carriage, as it is in the case of cable carriage.

In a significant departure from the provisions applicable to cable systems, section 338 does not condition carriage of a local television station's signal on delivery of a good quality signal to the carrier's designated local receive facility. It provides only that a local station may be required to bear the costs of delivering a good quality signal to the carrier's designated local receive facility.

Unlike the Cable Act, section 338 does not condition carriage on a local television station's delivering a good quality signal to a satellite carrier's designated local receive facility. In the Cable Act, a station which fails to deliver or agree to pay the costs of delivering a good quality signal to the principal headend of a cable system falls outside the definition of a "local commercial television station" entitled to mandatory carriage. No like exclusion exists in section 338. A satellite carrier is required to carry the signals of all local television stations requesting carriage under section 338. It may not refuse to carry a station simply because the station fails to deliver a good quality signal to its designated local receive facility. Instead, section 338(b)(1) requires only that stations bear the cost of delivering a good quality signal to the satellite carrier's local

receive facility.⁶⁴ Therefore, a satellite carrier rightly may insist on payment of the costs, but it may not refuse to carry the station if it is otherwise entitled to carriage under section 338.

The law here embraces the wisdom of experience. Cable systems often relied on undocumented or faulty signal measurements as a means of refusing carriage of many local stations. They ignored the Commission's pleas for cooperation. They resisted stations' efforts to improve the quality of their signals at the systems' headends. Numerous complaints were litigated at the Commission. Meanwhile, local stations were denied carriage. Under section 338, satellite carriers – unlike cable systems – will have no such excuse to deny carriage. Because they cannot escape their obligation to carry a station by alleging poor signal quality, they will have every incentive to communicate and cooperate with local stations to devise reasonable solutions to signal strength problems. Indeed, both the station and the satellite carrier will share a common goal – assuring availability of a good quality signal at the carrier's designated receive facility. The result should be fewer complaints for the Commission and less uncertainty for stations, satellite carriers, and consumers.

This distinction in the law also reflects differences between satellite and cable system architecture that produce vastly different levels of potential harm to a local station that is refused carriage. Cable systems are localized entities. Even in this age of

⁶⁴47 U.S.C. §338(b)(1).

consolidation, television markets usually host numerous cable systems. A protracted squabble with one or two cable systems in the market may cause only marginal harm to a station denied carriage. The harm is further reduced by the fact that smaller cable systems located at the periphery of a market, rather than large cable systems in core metro areas, are the more likely systems to suffer – or, at least, more credibly allege – the lack of a good quality signal. In this case of a satellite carrier, however, a refusal to carry a station means no carriage in the entire market. Thus, the dimension of potential harm to the local station is considerably greater.

Finally, the Commission long has been comfortable with the notion that actual payment of costs to be borne by a local station need not be a prerequisite to carriage. A commitment or agreement to pay has been considered sufficient to establish a local television station's carriage status.⁶⁵ Even where the precise actual costs cannot be determined in advance, the Commission has ordered carriage if the station has committed to pay the costs.⁶⁶ No advance payment has been required.⁶⁷

⁶⁵47 U.S.C. §534(h)(B)(Iii); (*Maranatha Broadcasting Company, Inc.*, CSR-5495-M, DA 00-1081 (released May 16, 2000); *SAH Acquisition Corporation II*, CSR-5498, DA 00-997 (released May 10, 2000).

⁶⁶*Broadcast Signal Carriage Issues*, *supra*, 8 FCC Rcd at 2993 (“We further believe that it is reasonable for a cable operator to receive a written commitment from a broadcaster that ensures that the payments will be made once the actual amount of copyright liability is determined.”); *Clarification Order*, *supra*, 8 FCC Rcd at 4145, n.19 (“[A] cable operator may not demand advance payment of estimated copyright fees as a condition for broadcasts to retain must-carry rights.”)

⁶⁷*Greater Dayton Public Television*, *supra*, 9 FCC Rcd at 5291.

E. A satellite carrier's local receive facility must be located in the station's local market.

A satellite carrier must designate a local receive facility within each local market where it provides local-into-local service. Section 338 states plainly that the local receive facility is the “reception point in each local market which a satellite carrier designates for delivery of the signal of the station for purposes of retransmission.”⁶⁸ Section 338 thus contemplates the designation of local receive facilities in each market. This provision is essential to the proper working of section 338. It limits the costs that must be borne by local television stations to provide a good quality signal to the carrier. If not confined to the station's local market, a designated local receive facility might be placed hundreds or thousands of miles away from the station. The cost of delivering a good quality signal then becomes prohibitive, and the carriage requirement is nullified. Therefore, the statute and the need to maintain its integrity dictate that satellite carriers designate a local receive facility in each local market where it offers local-into-local service.

F. A local television station may be required to bear the costs of delivering a signal to a location other than the satellite carrier's designated local receive facility only if one-half of the local stations electing carry-one, carry-all carriage in that market agree to another signal delivery site.

Local television stations may be required to bear the costs of delivering a good quality signal to a site other than the satellite carrier's designated local receive facility

⁶⁸47 U.S.C. §338(h)(2).

only if one-half of the stations in that market that have elected carry-one, carry-all status agree. First, Section 338(b)(1) is clear. Any other facility must be “acceptable to at least one-half the stations asserting the right to carriage in the local market.”⁶⁹ Only stations “asserting the right to carriage” may be counted. Stations electing retransmission consent have no right to carriage.⁷⁰ Therefore, they are excluded from the calculation. Similarly, only stations in the same local market may be counted. A station may assert its right to carriage only in its local market. Therefore, stations from non-local markets must be excluded from the calculation. Section 338 allows no other result.

Second, if stations that had elected retransmission consent were allowed into the calculation, the carriage rights of many carry-one, carry-all stations could be abrogated. Retransmission consent stations might well agree to an inconvenient or distant reception point. The costs of providing their signal to that point may be borne by the satellite carrier under a retransmission consent agreement. This could leave the carry-one, carry-all stations in the market confronted with prohibitive costs. For example, if the ABC, CBS, NBC, and Fox affiliates agree to deliver their signals (or, in fact, already provide them off-air) to a distant out-of-market location outside the coverage area of the local UPN and WB affiliates, then the UPN and WB affiliates would be required to bear

⁶⁹47 U.S.C. §338(b)(1).

⁷⁰47 U.S.C. §338(a)(1).

the greater costs of delivering their signal to that location. This is what the statute was designed to and does prevent.

Therefore, a satellite carrier may require stations to bear signal delivery costs to an alternate location only if one-half the carry-one, carry-all stations in the market agree to that location.

G. Satellite carriers must advise stations of the location of their designated local receive facility no later than their initial notice that they intend to commence local-into-local service in a market.

The rules should require satellite carriers to advise stations of the locations of their designated local receive facilities and, if necessary, that they fail to place a good quality signal over the carrier's designated receive facility in their initial notification of their intent to commence local-into-local service in a market. If they already have commenced such service, then they must so advise stations in their initial pre-election notices prior to 2002.⁷¹ Any change in the carrier's designated local receive facility should be preceded by at least 60 days notice to all local television stations in the affected market. Again, if necessary, this notice also should advise any affected local stations that they fail to place a good quality signal over the carrier's newly-designated local receive facility. This comports with the existing cable television regime and reflects

⁷¹See Section III, *infra*; see also Further Comments of the Association of Local Television Stations, CS Docket No. 99-363 (filed February 1, 2000); Further Reply Comments of the Association of Local Television Stations, CS Docket No. 99-363 (filed March 3, 2000).

the same common-sense approach.⁷² Satellite carriers, too, will be in a unique position to know which stations deliver the requisite signal strength at their designated local receive facilities. They ultimately bear the burden of showing that a good quality signal is not available. Requiring stations to ascertain the strength of their signals at the designated receive facility in such circumstances would call for a needless duplication of effort. Furthermore, advance notice will provide a lead time to resolve any problems before the carriage obligations become effective. As in the case of cable systems, notifications should be in writing and delivered in a manner that permits confirmation and proof of delivery (*e.g.*, return-receipt mail, an overnight courier that enables the sender to confirm receipt).⁷³ Therefore, a satellite carrier should be required to notify local stations of the location of its designated local receive facility and of any signal quality problems as part of its initial advance notice regarding local-into-local service.

IV. Material degradation

A. The Commission should prohibit use of any technical means of enhancing capacity that degrades picture quality.

The Act tolerates no material degradation of local television stations' signals. Whereas a variety of processing and transmission techniques may allow satellite carriers to cram more signals into the same bandwidth, the Commission must allow use of those techniques only where they produce no material degradation of local television

⁷²*Broadcast Signal Carriage Issues, supra*, 8 FCC Rcd at 2968, 2974. 2990.

⁷³*Id.*, 8 FCC Rcd at 2973.

stations' signals. First, section 338(g) imports the standard of no material degradation from section 614(b)(4) of the 1992 Cable Act. The essence of this standard is provision of a quality of signal processing and carriage for local television stations that is no less than that provided any other type of signal.⁷⁴ Coupled with the anti-discrimination focus of section 338, this forms an unassailable basis for an identical no material degradation standard in the satellite rules.

Second, the language of the Conference Report urging the Commission to allow use of reasonable compression and other techniques to meet their carriage obligations offers no basis for allowing satellite carriers to use processing techniques which degrade local television stations' signals.⁷⁵ The law takes precedence over legislative history to the extent they might be read to conflict.⁷⁶ And no conflict exists in any event. Permitting satellite carriers to use a variety of signal processing techniques to conserve capacity hardly need be read to clash with the basic prohibition of material signal degradation. Thus, the Conference Report language extends no valid invitation to the Commission to allow use of processing techniques that cause material degradation to local television stations' signals.

Third, no additional action is called for to address satellite carriers' concerns about limited capacity. Congress addressed those concerns in other provisions of section 338. It refrained from imposing an outright must-carry requirement. Instead, it

⁷⁴47 U.S.C. §534 (b)(4)(A).

⁷⁵Notice at ¶36.

established the carry-one, carry-all requirement, which allows satellite carriers to expand local-into-local gradually on a market-by-market basis. It also delayed the effective date of the carry-one, carry-all requirement for several years to provide time for satellite carriers to launch new satellites to expand their capacity – which they have now undertaken.⁷⁷ In short, no pressing need exists for the Commission to rush in with a legally erroneous solution to a problem Congress already has addressed. Therefore, the Commission must apply the standard from section 614(b)(4)(A) directly to satellite carriers without enfeebling it by permitting use of processing and transmission technologies which might cause material degradation of local television stations' signals.

B. The Commission must prohibit any picture quality discrimination against local television stations.

As it has in the case of cable television, the Commission should focus on the picture quality of local television stations' signals retransmitted by satellite carriers. As the Commission has observed, “[I]t is the end product which is crucial.”⁷⁸ The basic criterion is comparably good picture quality for local television station signals *vis-a-vis* the picture quality of other program services and that of other local stations in

⁷⁶See n. 36, *supra*.

⁷⁷ See, e.g., “DirecTV Orders First Spot Beam DBS Satellite,” *Communications Daily* (December 9, 1999) at 5-6.

⁷⁸*General Electric Company Commercial Electronics Products Department*, CSR-2826 (released May 31, 1985) at 11.

particular.⁷⁹ Finally, no need exists to cut satellite carriers any slack. They routinely promote their superior picture quality. Indeed, the Commission has rejected the notion that analog-to-digital and digital-to-analog conversions result in material degradation.⁸⁰ Thus, the Commission must return to the “fundamental objective of the rules ... to assure that the quality of signals as received is maintained as much as possible throughout the system and that no service is treated in a discriminatory fashion.”⁸¹

V. Carriage obligations and definitions

A. Election of carry-one, carry-all status should be considered a request for carriage.

A local television station that has elected carriage under the carry-one, carry-all requirement should be considered to have requested carriage. Whereas the Commission might require that an actual request for carriage accompany the election notification, this appears redundant. A station electing carriage as a carry-one, carry-all station does so for the purpose of assuring its carriage. No formal request would better express that sentiment. Consequently, the additional requirement of a formal request is unnecessary where a local television station already has notified a satellite carrier of its carry-one, carry-all election.

⁷⁹47 U.S.C. §534(b)(4)(A).

⁸⁰*Local Competition Third Report*, 15 FCC Rcd 3636, 3860 (2000).

⁸¹*General Electric Company Commercial Electronics Products Department, supra*, at 11.

On the other hand, where a station has failed to make an election, thereby assuming carry-one, carry-all status by default, a formal request for carriage would be in order. A request in that circumstance would not be redundant. Generally speaking, however, election of carry-one, carry-all status should constitute a request for carriage.

B. The additional requirements imposed by section 338 mesh easily into the overall retransmission consent election implementation scheme.

These proposals and the proposals previously advanced by ALTV in the Commission's proceeding to implement the retransmission consent and election provisions applicable to satellite retransmission easily mesh into a comprehensive scheme of notification.⁸² Each of the various scenarios of carriage – pre-2002 local-into local markets, subsequent local-into-local markets, new local television stations, and new satellite carriers – is readily accommodated.

The notification timetables and content requirements posited by ALTV and illustrated in tables 1-3, below, generally parallel the current cable requirements.⁸³ Few problems have arisen in implementing and administering the cable television rules. They also are familiar to local television stations and may be easily understood by satellite carriers. Furthermore, to the extent problems or questions may arise, a hefty body of case law already exists under the cable rules to provide guidance and enable prompt resolution of disputes.

⁸²Further Comments of ALTV, *supra*; Further Reply Comments of ALTV, *supra*.

ALTV, therefore, submits that its augmented proposals for notification and response would provide a sound regulatory scheme for implementation of sections 325(b) and 338 of the Act.

⁸³*Broadcast Signal Carriage Issues, supra*, 8 FCC Rcd at 2973, 3001; *Broadcast Signal Carriage Issues (Reconsideration), supra*, 9 FCC Rcd at 6743.

Table 1. Pre-2002 local-into-local markets

<u>Date</u>	<u>Notice from</u>	<u>To</u>	<u>Contents</u>
July 1, 2001	Satellite carrier	<ul style="list-style-type: none"> • Commission • All local television stations 	<ul style="list-style-type: none"> • Name of carrier • Name & title of person designated to receive notifications • Address of the satellite carrier and the person designated to receive notifications (if different) • Identification of the market (DMA) where service is provided • The call signs of the broadcast television stations the carrier is carrying and plans to carry in the market • Channel positioning and package and pricing information for local-into-local service • The location of the carrier's designated local receive facility and, if necessary, the alternate location proposed by the satellite carrier for reception of local stations' signals • Notice to the station, if necessary, that it fails to deliver a good quality signal to the designated local receive facility of the carrier, along with the required signal strength measurement test data and test procedure information.
October 1, 2001	Local television stations	Satellite carriers from which notices have been received	Retransmission consent/carry-one, carry-all election (request for carriage)

Between October 1, 2001 and January 1, 2002, stations that have not elected carry-one, carry-all and satellite carriers could negotiate retransmission consent agreements.